

Department of Energy

915.404-4-71-3

type of effort contained therein. It is the intent of DOE to—

(1) Reward contractors based on the complexity of work;

(2) Reward contractors who demonstrate and establish excellent records of performance; and

(3) Reward contractors who contribute their own resources, including facilities and investment of capital.

(b) Standard fees or across-the-board agreements will not be used or made. Profit or fee objectives are to be determined for each contract according to the effort or task contracted thereunder.

(c) Profit or fee payable on fixed-price and cost-reimbursable construction or construction management contracts shall be established in accordance with the appropriate procedures and schedules set forth in this subpart.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, July 22, 2009; 76 FR 7693, Feb. 11, 2011; 76 FR 10476, Feb. 25, 2011]

915.404-4-71-2 Limitations.

Amounts payable under construction and construction management contracts shall not exceed amounts derived from the schedules established for this purpose. Requests to pay fees in excess of these levels shall be forwarded to the Senior Procurement Executive for review and approval.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36378, July 22, 2009]

915.404-4-71-3 Factors for determining fees.

(a) The profit policy stated in 915.404-4-71-1(a) reflects, in a broad sense, recognition that profit is compensation to contractors for the entrepreneurial function of organizing and managing resources (including capital resources), and the assumption of risk that all costs of performance (operating and capital) may not be reimbursable.

(b) The best approach calls for a structure that allows judgmental evaluation and determination of fee dollars for prescribed factors which impact the need for, and the rewards associated with, fee or profit, as follows—

(1) Management risk relating to performance, including the—

(i) Quality and diversity of principal work tasks required to do the job;

(ii) Labor intensity of the job;

(iii) Special control problems; and

(iv) Advance planning, forecasting and other such requirements;

(2) The presence or absence of financial risk, including the type and terms of the contract;

(3) The relative difficulty of work, including consideration of technical and administrative knowledge, skill, experience and clarity of technical specifications;

(4) Degree and amount of contract work required to be performed by and with the contractor's own resources, including the extent to which the contractor contributes plant, equipment, computers, or working capital (labor, etc.);

(5) Duration of project;

(6) Size of operation;

(7) Benefits which may accrue to the contractor from gaining experience and know-how, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and

(8) Other special considerations, including support of Government programs such as those relating to small, small disadvantaged, and women-owned small business in subcontracting, energy conservation, etc.

(c) The total fee objective and amount for a particular negotiation is established by judgmental considerations of the factors in paragraph (b) of this section, assigning fee values as deemed appropriate for each factor and totaling the resulting amounts.

(d) In recognition of the complexities of this process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, fee schedules have been developed which set forth maximum fee amounts that contracting activities are allowed to negotiate for a particular transaction without obtaining prior approval of the Senior Procurement Executive. In addition, the fee negotiation objective established in accordance with 915.404-4-71-3(a), (b), and (c) shall not exceed the applicable fee schedule amounts without prior approval of the Senior Procurement Executive. To facilitate application to a contract, the fee amounts are related

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to the total cost base which is defined as total operating and capital costs.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, 36378, July 22, 2009]

915.404-4-71-4 Considerations affecting fee amounts.

(a) In selecting final fee amounts for the various factors in 915.404-4-71-3 of this section, the DOE negotiating official will have to make several judgments as discussed in this subsection.

(b) Complexity of a construction project shall be considered by analysis of its major parts. For a project which includes items of work of different degrees of complexity, a single average classification should be considered, or the work should be divided into separate classifications. The following class identifications are appropriate for proper fee determinations.

(1) *Class A*—Manufacturing plants involving operations requiring a high degree of design layout or process control; nuclear reactors; atomic particle accelerators; complex laboratories or industrial units especially designed for handling radioactive materials.

(2) *Class B*—Normal manufacturing processes and assembly operations such as ore dressing, metal working plant and simple processing plants; power plants and accessory switching and transformer stations; water treatment plants; sewage disposal plants; hospitals; and ordinary laboratories.

(3) *Class C*—Permanent administrative and general service buildings, permanent housing, roads, railroads, grading, sewers, storm drains, and water and power distribution systems.

(4) *Class D*—Construction camps and facilities and other construction of a temporary nature.

(c) Normal management elements of principal tasks relating to a construction contract cover several categories of tasks with differing rates of application throughout the construction period. The principal elements of management effort are outlined in this paragraph. Although each project has a total management value equal to 100% for all elements, the distribution of effort among the various elements will be different for each project due to differences in project character or size. The basic management elements and

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the normal range of efforts expected to apply for a normal sized project are as follows. When the normally expected effort will not be performed by a contractor, this fact should be considered in arriving at appropriate fee amounts.

Management elements	Effort range	
	Min-imum	Max-imum
I. <i>Broad project planning.</i> Overall project planning and scheduling, establishment of key project organization and consultation with the A-E and DOE. Performed by highest level of contractor's officers, technical personnel and project manager	15	25
II. <i>Field planning.</i> Mobilization and demobilization of top field organization from the contractor's existing organization and from other sources as necessary. Detailed project planning and scheduling for construction of facilities. Performed by the project manager and top field professional staff	18	28
III. <i>Labor supervision.</i> Direct supervision of manual employees. Performed by contractor's subprofessional staff, such as superintendents and foremen (some salaried and some hourly rate). This includes the contractor's personnel to coordinate and expedite the work of Subcontractors	12	16
IV. <i>Acquisition and subcontracting.</i> Acquisition of other than special equipment. Selection of subcontractors and execution and administration of subcontracts. Performed by contractor's staff under supervision and direction of elements I and II	12	16
V. <i>Labor relations and recruitment (manual).</i> Performed by the contractor's staff under supervision and direction of elements I, II and III. This includes demobilization of work forces	7	11
VI. <i>Recruitment of supervisory staff.</i> Staffing required to supplement the organization under elements I and II, and demobilization during completion of the project. Performed by contractor's permanent staff and recruitment personnel under supervision and direction of management elements I and II	4	6
VII. <i>Expediting.</i> Expediting contracting performed by contractor's staff and by subcontractors. Performed by contractor's staff under supervision and direction of elements I and II	4	6
VIII. <i>Construction equipment operations.</i> This includes mobilization and demobilization. Performed by contractor's staff under supervision, direction and coordination of elements I, II, and IV	4	6